

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9376 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HASAN ALI KHANBHAI & SONS THROUGH PARTNER ISMAIL

Versus

DISTRICT COLLECTOR

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Appearance:

MR SANDEEP N BHATT for Petitioner  
Ms AMI YAGNIK, AGP for Respondents

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/02/99

ORAL JUDGEMENT

Rule. Ms Ami Yagnik, learned AGP appears and waives service of Rule at the suggestion of the Court. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In this petition under Articles 226 and 227 of the Constitution, the petitioners have challenged the judgment and order dated 22.6.1998 passed by the Additional Chief Secretary (Appeals) in the Revenue Department of the State Government in revision application No. SRD/BSP/Rajkot/37/94 under Section 211 of the Bombay Land Revenue Code, 1879 (hereinafter

referred to as "the Code") confirming the order dated 5.5.1994 passed by the Collector, Rajkot imposing penalty of Rs.38,850/- for breach of the conditions on which N.A. permission order under Section 67 of the Code was granted in respect of land admeasuring 2 Acres in Survey No. 579 of Rajkot.

3. The petitioners were granted N.A. permission dated 11.8.1961. One of the conditions of the N.A. permission was that the petitioners were required to complete construction on the land in question within three years from the date of the N.A. permission order. Since that condition was violated, on the basis of the report of the subordinate authorities, the Collector initiated proceedings in the year 1993 under Section 67 of the Code. The petitioners pleaded in their defence that in the intervening period the Gujarat Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 as well as the Urban Land (Ceiling & Regulation) Act, 1976 had been enacted. On account of the restrictions imposed by the said enactments, the petitioners could not put up construction on the land in question. It was further pleaded that the petitioner had put up a scheme under Section 21 of the ULC Act and the authorities under the Act had cancelled the scheme and, therefore, the petitioners were required to file a petition before this Court which was pending since 1983. After hearing the petitioners, the Collector passed the impugned order dated 5.5.1994 (Annexure "A") holding that there was a breach of the condition as the petitioners had not completed the construction within three years and, therefore, penalty at the rate of 40 times of the land assessment on the land admeasuring 8093.70 sq.mtrs. in Survey No. 579 was imposed and the amount was worked out to Rs.38,850/-. The petitioners' revision application against the aforesaid order came to be dismissed by the Additional Chief Secretary on 22.6.1998 (Annexure "D"). It is against the aforesaid orders that the present Special Civil Application is filed.

4. At the hearing of this petition, the learned counsel for the petitioners submitted that on account of the intervening legislations under which the petitioners could not have completed the construction without the permission of all the authorities and in view of the fact that Special Civil Application No. 2114/83 filed by the petitioners against the order of the Competent Authority cancelling the scheme under Section 21 came to be allowed by this Court only on 25.2.1994, the petitioners could not put up construction on the land in question. It was further submitted that paying the penalty as ordered by

the Collector and confirmed by the Additional Chief Secretary may still expose the petitioners to further proceedings on one ground or the other and, therefore, also the petition may be admitted and operation of the impugned orders may be stayed.

5. On the other hand, the learned AGP has submitted that the penalty was rightly imposed upon the petitioners because admittedly the petitioners had not put up any construction between 1961 and 1972 during which period there was no legislation prohibiting any construction activity on the land in question and that the Collector was justified in passing the impugned order for imposing penalty on the petitioners for breach of the N.A. permission.

6. Having heard the learned counsel for the parties, it appears that the defence pleaded by the petitioners may have some relevance for the period between 1972 and 1994 but there was no justification even pleaded for the inactivity between 1961 and 1972 and, therefore, the Collector was justified in imposing the penalty as per the order dated 5.5.1994. It is also required to be noted that all that the Collector has done is to impose penalty for breach of the condition and no further adverse order has been passed so far. The ends of justice would, therefore, be served if, while upholding the order of the Collector as confirmed by the Additional Chief Secretary imposing the penalty, the petition is disposed of with a direction that if the petitioners pay the aforesaid amount of penalty (Rs.38,850/-) to the Collector, Rajkot within one month from today and complete construction on the land in question within three years from today, the respondents shall not take any further action against the petitioners in respect of the aforesaid N.A. permission.

7. It is clarified that this order shall not come in the way of the authorities taking any action against the petitioners, if the petitioners commit breach of any other law in respect of the land in question.

The petition is disposed of in terms of the aforesaid directions and observations.

8. Subject to the aforesaid directions and observations, Rule is discharged.

February 5, 1999 (M.S. Shah, J.)

sundar/-

